

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**ADVISORY OPINION NO. 225**

This matter concerns a complaint alleging a conflict of interest between a councilmember's role as a board member of a bank and his/her position on the City Council. In this regard the City Charter has been revised to clearly permit council-members to abstain from voting when a conflict exists if they choose.

The Ethics Commission has now issued the attached guidelines which deal with voting on matters when one has a direct or indirect business or financial interest that creates a conflict of interest. These new guidelines apply not only to council-members but also to all members of City boards and commissions.

The guidelines were developed taking into account the corporation Counsel's opinion that councilmembers are not full-time employees of the City. The Commission felt that it would be unreasonable, therefore, to expect councilmembers not to have outside sources of income and employment.

Attachment

Dated: May 6, 1993

BONIFACE K. AIU  
Chair, Ethics Commission

TO: COUNCILMEMBERS AND ALL BOARD AND COMMISSION MEMBERS

FROM: BONIFACE K. AIU, CHAIR, AND ETHICS COMMISSIONERS

SUBJECT: GUIDELINES ON ABSTENTION FROM VOTING

The Ethics Commission issues these guidelines on abstention from voting which apply to all City Councilmembers and all members of City boards and commissions.

As a general rule, City Councilmembers and all members of City boards and commissions should not have business or financial interests which create ongoing conflicts of interest with their City responsibilities. This rule appears in Section 11-102.3, Revised Charter of the City and County of Honolulu 1973 (1984 Ed.) [RCH], which provides as follows:

No elected or appointed officer or employee shall...[e]ngage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of such person's official duties or which may tend to impair the independence of judgment in the performance of such person's official duties.

The Charter also provides a mechanism for disclosing an occasional conflict of interest. The procedure is explained in Section 11-103, RCH, which provides as follows:

Any elected or appointed officer or employee who possesses or who acquires such interests as might reasonably tend to create a conflict with the public interest shall make full disclosure in writing to such person's appointing authority or to the council, in the case of a member of the council, and to the ethics commission, at any time such conflict becomes apparent. Such disclosure statements shall be made a matter of public record and be filed with the city clerk. Any member of the council who knows he [sic] has a personal or private interest, direct or indirect, in any proposal before the council, shall disclose such interest in writing to the council. Such disclosure shall be made a matter of public record prior to the taking of any vote on such proposal.

You will note that the section quoted above is silent on the matter of voting by the person holding a conflict of interest. However, the Charter elsewhere (Section 3-107) does specifically state that "[a]ll councilmembers shall have the right to vote in the council at all times."

Nevertheless, the Standards of Conduct address the subject of fair and equal treatment. Section 11-104, RCH, provides as follows:

Elected or appointed officers or employees shall not use their official positions to secure or grant special consideration, treatment, advantage, privilege or exemption to themselves or any person beyond that which is available to every other person.

The Ethics Commission believes that Section 11-104 of the Charter has the result of prohibiting voting on a matter in which any City officer or employee has a business or financial interest,

although he or she still would be required to file a disclosure statement, as required by Section 11-103, RCH. The Ethics Commission acknowledges that its interpretation of the Standards of Conduct cannot overrule councilmembers' right to vote as guaranteed in Section 3-107, RCH. However, the Commission encourages Councilmembers to abstain **voluntarily** from voting on matters in which they have direct or indirect business or financial interests.

BONIFACE K. AIU  
Chair, Ethics Commission